

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John DiIorio,

Complainant

against

Docket #FIC 2019-0244

Commissioner, State of Connecticut,
Department of Banking; and State of
Connecticut, Department of Banking,

Respondents

August 12, 2020

The above-captioned matter was heard as a contested case on June 28, 2019, July 9, 2019, and January 27, 2020, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

On October 11, 2019, the respondents filed a motion to dismiss or to strike any parts of the complainant's request that sought records "relating to" various entities or regulatory topics as well as any record "that refers to" various entities, names and regulatory topics. The respondents contended that the use of such terms are indicia of research and that the FOI Act does not require the conduct of research in responding to a request for records. The motion to dismiss was denied on November 8, 2019.

After consideration of the entire record, the following facts are found, and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter of complaint filed on April 24, 2019, and later amended on May 22, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of certain public records.
3. By letter dated January 8, 2019, the complainant requested the following records from the respondents:
 - a. All correspondence and communications, in electronic or paper form (aside from that with Ross Garber) sent or received by or copied to Carmine Costa, Stacey Serrano, Daniel Landini,

Beata Zuber or any other personnel of the Department of Banking relating in any way to 1st Alliance Lending, which correspondence has been sent or received during the past 24 months.

- b. All correspondence and communications, in electronic or paper form sent or received by or copied to Carmine Costa, Stacey Serrano, Daniel Landini, Beata Zuber or any other personnel of the Department of Banking relating in any way to Total Mortgage Services LLC or to any of its current or former employees, which correspondence has been sent or received during the past 24 months.
- c. All correspondence and communications, in electronic or paper form sent or received by or copied to Carmine Costa, Stacey Serrano, Daniel Landini, Beata Zuber, Richard Cortex, Matthew Smith, or any other personnel of the Department of Banking with any member of the Connecticut Legislature or a representative or staff of any member, relating in any way to Consumer Licensing Act (PA 18-173), which correspondence has been sent or received during the past 24 months.
- d. All correspondence and communications, in electronic or paper form sent or received by or copied to any personnel of the Department of Banking with any committee member of any Conference of State Bank Supervisors (CSBS) or American Association of Residential Mortgage Regulators (AARMR) committee relating in any way to the term: "Mortgage Loan Originator," "taking an application," the term "application", the terms "offer and negotiate term", TILA FRCA, "customary and necessary to extend an offer of credit", "bona fide offer of credit", "subject property", "loan amount", "loan originator", or "mortgage loan originator license", licensing, or licensure:, which correspondence has been sent or received during the past 24 months.
- e. All presentations prepared in whole or in part, or made by, any member of the Department to any CSBS Committee or Committee member, AARMR Committee or Committee member, or any other regulatory body or committee, which presentation is dated or made during the past 24 months.
- f. All records of travel for Daniel Landini, Carmine Costa, Richard Cortes, Jorge Perez, and Stacey Serrano including, but not limited to, receipts and statement of the purpose of travel,

which records are dated during the past 24 months.

- g. All correspondence and communications, in electronic or paper form sent or received by or copied to any personnel of the Department of Banking with any member, employee or representative of the Department of Economic and Community Development that refers to 1A, 1st Alliance, 1st Alliance Lending, LLC, John DiIorio, DiIorio, James Rivers, Jim Rivers, Mortgage Loan Originator, Walsh, or Allegro, which correspondence has been sent or received during the past 24 months.
 - h. All correspondence and communications, in electronic or paper form sent or received by or copied to any personnel of the Department of Banking with any media outlet that refers to 1A, 1st Alliance, 1st Alliance Lending, LLC, Jon DiIorio, DiIorio, James Rivers, Jim Rivers, Mortgage Loan Originator, Mortgage Loan Originator License, Licensing or licensure, Total Mortgage, John Walsh, or Allegro, which correspondence has been sent or received during the past 24 months.
 - i. All correspondence and communications, in electronic or paper form sent or received by or copied to any personnel of the Department of Banking with any other Connecticut administrative agency that refers to 1A, 1st Alliance, 1st Alliance Lending, LLC, John DiIorio, DiIorio, James Rivers, Jim Rivers, Mortgage Loan Originator, Mortgage Loan Originator License, Licensing or Licensure, Total Mortgage, John Walsh, or Allegro, which correspondence has been sent or received during the past 24 months.
 - j. All correspondence and communications, in electronic or paper form sent or received by or copied to any personnel of the Department of Banking with any federal regulatory body that refers to 1A, 1st Alliance, 1st Alliance Lending, LLC, John DiIorio, DiIorio, James Rivers, Jim Rivers, Mortgage Loan Originator, Mortgage Loan Originator License, licensing or licensure, Total Mortgage, John Walsh, or Allegro, which correspondence has been sent or received during the past 24 months.
4. Section 1-200(5), G.S., defines “public records or files” as follows:

Any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a

public agency, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. Section 1-210(a), G.S., provides, in relevant part:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

7. It is found that the records requested by the complainant, to the extent that they are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the respondents acknowledged the complainant's request on January 9, 2019. In their acknowledgement correspondence, the respondents asked clarifying questions and described the searches that would be undertaken to identify responsive records. The respondents asked the complainant to respond with concerns about the sufficiency of the proposed searches by January 14, 2019.

9. It is found that the complainant and the respondents then engaged in a series of correspondences regarding the search process and the interpretation of certain portions of the FOI Act.

10. It is found that on or about April 4, 2019, the complainant was notified that the first production of records was available.

11. On April 24, 2019, the complainant filed an appeal with the Commission alleging that the respondents violated the FOI Act by failing to provide all records responsive to his request and objecting to the statutory exemptions claimed by the respondents.

12. The respondents withheld more than 55,000 records from disclosure. The respondents contended that the withheld records were exempt from disclosure as such records include confidential records of the Department of Banking exempt from disclosure pursuant to §§36a-21(a)(1), 36a-21(a)(2), 36a-21(a)(3) and 36a-21(d), G.S. The respondents further contended that the statutes that provide for the confidentiality of such records fall within the FOI Act's "except as otherwise provided" provision of §1-210(a), G.S., because the express terms of

the applicable statutes provide for the confidentiality of such records.

13. Additionally, the respondents contended that among the records responsive to the complainant's request are records deemed to be preliminary drafts exempt from disclosure pursuant to §1-210(b)(1), G.S., records pertaining to strategy and negotiations with respect to pending claims or pending litigation pursuant to §1-210(b)(4) G.S., and records which are communications between the respondents and their attorney(s) which are privileged by the attorney-client relationship and thus exempt from disclosure pursuant to §1-210(b)(10), G.S.

14. On July 12, 2019, after two hearings on this matter, the hearing officer ordered the respondents to provide all responsive, non-exempt records that had not yet been released to the complainant, to be released no later than July 31, 2019. Additionally, the respondents were ordered to submit the responsive records for which exemptions were being claimed to the Commission for an in camera review no later than August 15, 2019.

15. It is of note that throughout the time this matter was under consideration, the complainant was a principal in a corporation regulated by the respondents and that such corporation was the subject of an investigation by the respondents. The circumstances of such investigation were the topic of numerous media reports. At the time of the hearings on this matter and as of the date of this report, the regulatory controversy between the parties remained pending.

16. On August 15, 2019, the respondents complied with the in camera order and submitted 55,966 records for in camera review along with the required in camera index.¹ Such records were divided into 2,278 groups. The in camera records were designated IC000001 through IC055966.

17. With regard to the records contended to be confidential records of the Department of Banking, §36a-21, G.S., states in relevant part:

(a) Notwithstanding any provision of state law and except as provided in subsections (b) and (d) of this section and subdivision (2) of subsection (a) of section 36a-534b, the following records of the Department of Banking shall not be disclosed by the commissioner or any employee of the Department of Banking, or be subject to public inspection or discovery:

(1) Examination and investigation reports and information contained in or derived from such reports, including examination reports prepared by the commissioner or prepared on behalf of or

¹ It is of note that a great number of the records were found to be duplicates because many records were email messages and attachments that were copied to several of the respondents' employees. After the initial review of the in camera records, the hearing officer prepared an order with directions to the respondents to provide clarification of the exemptions claimed for approximately 1,850 of the records submitted. The reply from the respondents resulted in the withdrawal of some claimed exemptions and the subsequent release of additional records.

for the use of the commissioner;

(2) Confidential supervisory or investigative information and records obtained or collected by a state, federal or foreign regulatory or law enforcement agency;

(3) Information obtained, collected or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the Department of Banking, if such records are protected from disclosure under federal or state law or, in the opinion of the commissioner, such records would disclose, or would reasonably lead to the disclosure of: (A) Investigative information the disclosure of which would be prejudicial to such investigation, until such time as the investigation and all related administrative and legal actions are concluded; (B) personal or financial information, including account or loan information, without the written consent of the person or persons to whom the information pertains; or (C) information that would harm the reputation of any person or affect the safety and soundness of any person whose activities in this state are subject to the supervision of the commissioner, and the disclosure of such information under this subparagraph would not be in the public interest; and . . .

(b) The commissioner may, without waiving any privilege, disclose the records described in subsection (a) of this section for any appropriate supervisory, governmental, law enforcement or other public purpose. Any such disclosure shall be made under safeguards designed to prevent further dissemination of such records. In any proceeding before a court, the court may issue a protective order in appropriate circumstances to protect the confidentiality of any such record and order that any such record on file with the court or filed in connection with the court proceeding be sealed and that the public be excluded from any portion of the proceeding at which any such record is disclosed.

(c) No director, officer, employee or agent of any Connecticut bank, Connecticut credit union or licensee under section 36a-380 or 36a-628 shall disclose without the prior written consent of the commissioner any information contained in an examination report about such bank, credit union or licensee which information is not otherwise a matter of public record.

(d)(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the system, as defined in section 36a-2, and any privilege arising under

federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all federal and state regulatory officials with mortgage or other financial services industry oversight authority without the loss of privilege or the loss of confidentiality protection provided by federal or state law. For purposes of this subsection, the commissioner may enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing governmental agencies.

(2) Any information or material that is under subdivision (1) of this subsection subject to privilege or confidentiality shall not be subject to (A) disclosure under any federal or state law governing disclosure to the public of information held by an officer or agency of the federal government or the respective state; or (B) subpoena, discovery or admission into evidence in any private civil action or administrative process, except a person may, at such person's discretion, waive in whole or in part a privilege held by the system concerning such information and material.

(3) Any law of this state relating to the disclosure of confidential supervisory information or of any information or material described in subdivision (1) of this subsection that is inconsistent with subdivision (1) shall be superseded by the requirements of this subsection

18. After a careful examination of the in camera records, it is found that with the exception of the records identified in paragraph 19, below, the submitted records the respondents contended to be exempt pursuant to §36a-21, G.S., are records of the Connecticut Department of Banking. Additionally, it is found that such records constitute examination and investigation reports and information contained in or derived from such reports; confidential supervisory or investigative information and records obtained or collected by a state, federal or foreign regulatory or law enforcement agency; information obtained, collected or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the Department of Banking; investigative information the disclosure of which would be prejudicial to such investigation; personal or financial information, including account or loan information; and information received through agreement with the Conference of State Bank Supervisors (CSBS), the American Association of Residential Mortgage Regulators (AARMR), as well as other associations representing governmental agencies. It is concluded that such records are exempt from release in accordance with §§36a-21(a)(1), 36a-21(a)(2), 36a-21(a)(3)(A), 36a-21(a)(3)(B), and 36a-21(d), G.S., as contended by the respondents. Accordingly, it is concluded that the respondents did not violate the FOI Act by denying the complainant access to such

records.

19. The respondents contended that the records identified as IC020807-IC020810 were exempt from disclosure as confidential records of the Department of Banking. However, after careful examination of such records, it is found that IC020807-IC020810 are not confidential records of the Department of Banking exempt from disclosure pursuant to §36a-21, G.S., as contended by the respondents. Instead, such records are routine correspondence regarding a scheduling issue. Accordingly, it is concluded that the respondents violated the FOI Act when they failed to disclose such records to the complainant.

20. The respondents contended that 535 groups of the 2,278 groups of in camera records were exempt from release pursuant to other statutory provisions as described in paragraph 13, above, in addition to §36a-21, G.S. After careful inspection of such records it is found that such records are confidential records of the Department of Banking as described in paragraph 18, above, and therefore exempt from disclosure pursuant to §36a-21, G.S., as contended by the respondents. An analysis of the additional claimed exemptions for such records is not necessary. It is concluded that the respondents did not violate the FOI Act when they denied the complainant access to such records.

21. The respondents contended that 23 groups of the records submitted for in camera inspection were exempt from disclosure solely because such records constituted preliminary drafts of records which were prepared by staff members and subject to revision prior to submission to or discussion among the members of the agency pursuant to §1-210(b)(1), G.S. Such records are identified as IC000013-IC000053; IC000113; IC000174; IC000208-IC000211; IC000778-IC000783; IC000797-IC000798; IC000854-IC000856; IC001059-IC001065; IC001067-IC001072; IC001525-IC001526; IC002058-IC002140; IC002363-IC002378; IC005782-IC005804; IC007220-IC007239; IC007254-IC007292; IC007340-IC007355; IC011185-IC011267; IC011401-IC011416; IC018525-IC018545; IC018621; IC019200-IC019203; IC020092; and IC022484-022485.

22. Section 1-210(b)(1), G.S., provides:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;

23. In 1980, the Connecticut Supreme Court interpreted the phrase “preliminary drafts or notes.” Wilson v. Freedom of Information Commission, 181 Conn. 324 (1980). In Wilson, the Court ruled that “preliminary drafts or notes reflect that aspect of an agency’s function that precedes formal and informed decision making . . . It is records of this preliminary, deliberative and predecisional process that . . . the exemption was meant to encompass.” Id. at 332-33. In addition, the FOI Act also requires the public agency to determine that “the public interest in withholding such document clearly outweighs the public interest in disclosure.” Id. at 338-39.

In conducting the balancing test, “the agency may not abuse its discretion in making the decision to withhold disclosure. The agency must, therefore, indicate the reasons for its determination to withhold disclosure and those reasons must not be frivolous or patently unfounded.” Id. at 339.

24. The year following Wilson, the Connecticut legislature adopted Public Act 81-431, and added to the FOI Act the language now codified in §1-210(e)(1), G.S. Accordingly, §1-210(b)(1), G.S., must be read in conjunction with §1-210(e)(1), G.S.

25. Section 1-210(e)(1), G.S., provides, in relevant part, that “[n]otwithstanding the provisions of subdivisions (1) . . . of subsection (b) of this section, disclosure shall be required of:

Interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, except disclosure shall not be required of a preliminary draft of a memorandum, prepared by a member of the staff of a public agency, which is subject to revision prior to submission to or discussion among the members of such agency.

26. Based upon careful in camera inspection, it is found that the records identified in paragraph 21, above, constitute preliminary drafts or notes within the meaning of §1-210(b)(1), G.S.

27. It is found that the respondents conducted a proper balancing test in making their determination that the public interest in withholding such records outweighs the public interest in disclosing such records. Additionally, it is found that such determination was reasonable and not frivolous or patently unfounded, and that the respondents did not abuse their discretion when they made such determination. See Van Norstrand v. Freedom of Information Commission, 211 Conn. 339, 344 (1989) (so long as agency does not abuse its discretion in making the necessary determination, the Commission shall not substitute its judgment in this regard).

28. It is further found that such records are not interagency or intra-agency memoranda or letters, advisory opinions, recommendations or any report comprising part of the process by which governmental decisions and policies are formulated, within the meaning of §1-210(e)(1), G.S.

29. Therefore, it is concluded that the in camera records identified in paragraph 21, above, except for the records discussed in paragraphs 30 and 31 below, are exempt from disclosure pursuant to §1-210(b)(1), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act by denying the complainant access to such records.

30. After careful examination of IC007220-IC007228 and IC007236-IC007239 it is found that such records are not preliminary drafts as contended by the respondents. However, these two records are instead confidential records of the Department of Banking comprised of examination and investigation reports and information contained in or derived from such reports, as well as confidential supervisory or investigative information and as such are exempt from release pursuant to §§36a-21(a)(1) and 36a-21(a)(2), G.S. Accordingly, it is concluded that the

respondents did not violate the FOI Act by denying the complainant access to such records.

31. However, it is found that the respondents failed to prove that the records identified as IC007229-IC007235; IC007254-IC007292; and IC22484-IC22485 are preliminary drafts as contended. Therefore, it is concluded that the respondents violated the FOI Act when they did not disclose such records.

32. The respondents contended that 40 groups of the records submitted for in camera inspection were exempt from disclosure solely because such records constituted communications privileged by the attorney-client relationship pursuant to §1-210(b)(10), G.S. Such records are identified as IC001092-IC001093; IC001098; IC001103-IC001107; IC001110-IC001111; IC002311-IC002312; IC007446-IC007448; IC007867-IC007868; IC009405-IC009406; IC009408; IC019707-IC019712; IC019865-IC019919; IC020029-IC020032; IC020044-IC020056; IC020058-IC020064; IC020143-IC020147; IC020190-IC020194; IC020595-IC020600; IC020609-IC020610; IC020613; IC020639-IC020641; IC020643-IC020644; IC020654; IC020815-IC020819; IC020821-IC020825; IC020903-IC020904; IC020907-IC020975; IC021659-IC021665; IC022538-IC022557; IC022562-IC022616; IC022835-IC022851; IC022861-IC022867; IC022869-IC022875; IC023034-IC023052; IC023555-IC023570; IC023582-IC023607; IC024610-IC024616; IC027453-IC027453.0047; IC027700-IC027725; IC027733-IC027736; and IC027743-IC027749.

33. Section 1-210(b)(10), G.S., states in relevant part:

Nothing in the Freedom of Information Act shall be construed to require disclosure of:

(10) Records, tax returns, reports and statements exempted by federal law or the general statutes or communications privileged by the attorney-client relationship....

34. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Connecticut Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id. at 149.

35. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such

legal advice. . . .

36. The Connecticut Supreme Court has also stated that, “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

37. Based upon careful in camera inspection of the records identified in paragraph 32, above, it is found that such records are communications between the respondents and their attorney(s) and that such communications sought legal advice or related to such legal advice. It is found that such records are exempt from release pursuant to §1-210(b)(10), G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act by denying the complainant access to such records.

38. The respondents contended that 20 groups of the records submitted for in camera inspection were exempt from disclosure pursuant to both the preliminary draft and attorney-client exemptions pursuant to §§1-210(b)(1) and (b)(10), G.S. Such records are identified as: IC000757-IC000769; IC020601-IC020608; IC020614-IC020622; IC020624-IC020638; IC020826-IC020843; IC020905-IC020906; IC021670-IC021719; IC022558-IC022561; IC022833-IC022834.0192; IC022893-IC022911; IC022913-IC022919; IC022949-IC022958; IC022995-IC023015; IC023053-IC023104; IC023231-IC023255; IC023571-IC023581; IC023933-IC024036; IC024605-IC024609; IC024623-IC024641; and IC027689-IC027699.

39. After careful examination of the in camera records identified in paragraph 38, above, it is found that all such records with the exception of the IC022949-IC022958 and IC022995-IC023015, constitute confidential attorney-client communications which seek legal advice or pertain to such legal advice. It is found that such communications are exempt from disclosure pursuant to §1-210(b)(10), G.S. Because such records are found to be exempt further analysis of additional claimed exemptions is not necessary. Additionally, it is found that IC023961-IC023963 are not responsive to the complainant’s request. Accordingly, it is concluded that the respondents did not violate the FOI Act by denying the complainant access to such records.

40. It is found that IC022949-IC022958 and IC022995-IC023015 are neither communications protected by the attorney-client privilege nor are they preliminary drafts as contended by the respondents. Accordingly, it is concluded that the respondents violated the FOI Act by denying the complainant access to such records.

41. With regard to promptness, the Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; the time constraints under which the agency must complete its other work; the importance of the records to the requestor, if ascertainable; and the importance to the public of completing the other agency business without

loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requestor.

42. It is found that the request from the complainant was complex and ultimately resulted in the identification of tens of thousands of pages of responsive records. It is found that the complainant and respondents engaged in ongoing dialogue regarding attempts at narrowing the search and the identification of search terms. It is found that the complainant was the chief executive officer and managing member of 1st Alliance Lending, LLC, a company which was the target of regulatory action by the respondents. It is found that the records requested by the complainant were highly important to him as was the prompt production of such records. It is found that the complainant sought the records for potential use in the regulatory action against his company by the respondents.

43. It is found that Attorney Paul Bobruff was the respondents’ employee charged with responding to FOI requests for the respondents. It is further found that the processing and response to the complainant’s request was not the only task Attorney Bobruff was responsible for in the weeks and months following receipt of the request. It is found that the respondents were engaged in other investigations and enforcement actions unrelated to the complainant in this matter as well as matters of litigation and time-sensitive discovery which required Attorney Bobruff’s attention.

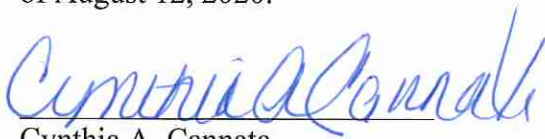
44. It is found that on or about April 4, 2019, the respondents disclosed approximately 1,650 records responsive to the complainant’s request. Most, if not all of the records released on April 4, 2019, had been gathered in response to an earlier FOI request made by another complainant in Docket FIC #2019-0159, and involved a request similar to the request in this matter. It is of note that the earlier request in Docket FIC #2019-0159 was made by Attorney Ross Garber as a representative of 1st Alliance Lending, LLC., the company for which the complainant in this matter is the chief executive officer and managing member.

45. It is found that other than the release on or about April 4, 2019, as of the date of the second hearing in this matter on July 9, 2019, no other records had been disclosed. It is found that the respondents identified and compiled a number of records responsive to the complainant’s request that were not exempt from disclosure and such records were held in the respondents’ document management system known as Concordance. However, instead of disclosing the records to the complainant, it is found that the records were withheld with the goal of disclosing all responsive records at one time. Such records were later disclosed in response to an order issued by the hearing officer on July 12, 2019, requiring that such records be disclosed no later than July 31, 2019. The respondents were aware of the importance of the records requested by the complainant, yet they withheld such records for months with the goal of releasing all of the records at one time in spite of a commitment to “rolling production”. It is found that the respondents did not engage in “rolling production” and therefore, it is concluded that the respondents violated the FOI Act when they failed to promptly release the aforementioned records.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide a copy of the records described in paragraphs 19, 31 and 40, above, at no cost to the complainant.
2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 12, 2020.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

JOHN DIORIO, c/o Attorney James Robertson, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, PO Box 1110, Waterbury, CT 06702 and Attorney Ann H. Rubin, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, PO Box 1110, Waterbury, Ct 06721-1110

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF BANKING;
AND STATE OF CONNECTICUT, DEPARTMENT OF BANKING**, c/o Assistant Attorney General John Langmaid, Office of the Attorney General, PO Box 120, 55 Elm Street, Hartford, CT 06141



Cynthia A. Cannata
Acting Clerk of the Commission